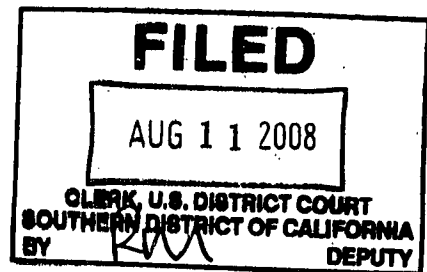


Phillip W. Dunn, Defendant, ASU
CSATA & STATE PRISON

P.O. Box 5248
CONCORD, CA 93212



In The United States District Court
For The Southern District Of California

Phillip W. Dunn,
Petitioner,

v.

Ken Clark, Warden
Respondent,

08-0485 BTM (Jmp)

Petitioner's motion to The
Attorney General's motion
to Dismiss

The Honorable Judge J. Adler

Introduction

I AM CURRENTLY IN THE ASU AT CSATA & STATE PRISON. I AM AND HAVE BEEN SUBJECTED TO MAJOR RETALIATION BY THE MEDICAL DEPARTMENT AND OTHER STAFF. A LUN K. BULSON LIED TO PUT ME IN THIS SITUATION. THIS HAS PLACED A GREAT HARDSHIP ON ME. AS I DO NOT HAVE ACCESS TO CERTAIN THINGS I NEED BOTH LEGALLY AND MEDICALLY SPEAKING. I WOULD ASK THE COURT TO UNDERSTAND THE ADVERSE CONDITIONS FROM WHICH I AM PLEADING. THIS WILL BE A LOGICAL LEGAL ARGUMENT AS OPPOSED TO A LENGTHY POINTS AND AUTHORITIES DEBATE. THE ATTORNEY GENERAL OFFICE (AGO) IS WELL AWARE OF MY PROBLEMS WITH THE MEDICAL SYSTEM AS THEY HAVE BEEN CONTACTED MANY TIMES TO RESOLVE THEM.

(1)

08-CV-0485

1 STATEMENT in support of CASE FACTS.

2 The Issue Before the court deals with a couple of key Issues.
 3 Issues I Believe Have Not Been Heard or Ruled on. The AG
 4 STATES That I HAVE Run out of time. That the writ
 5 Before you is untimely And Not Retro Active. Yet Cunningham
 6 was given Relief After Fourteen (14) years.

7 JUST BECAUSE The exact word Retro Active did not appear
 8 in the United State Supreme Court Ruling does not mean the
 9 Spirit of the law was lacking in it's Attempt to Bring the
 10 UNCONSTITUTIONAL sentencing practices used in the California
 11 Courts to Rest.

12 When I made The Initial Filing of this writ in the Superior
 13 Court of San Diego. No mention was made of time limitations
 14 or Final Judgements, Because That court knew prisoners would
 15 Be Seeking Relief under the New Ruling.

16 The AG's Comment About the muddled portion of that Response,
 17 I found quite clear. It stated that All the Booker, Blake
 18 Apprendi, And now Cunningham had Been decided, It did not Apply
 19 to me. I Appealed that decision thru All the levels of the California
 20 Court System And still a MAJOR portion of that writ Has gone
 21 UNANSWERED.

22 Cunningham v. California States that the "dual usage" of a prior
 23 is AN UNCONSTITUTIONAL practice! yet California Insists the Supreme
 24 Court is wrong! In my writ to the San Diego Superior Court I make
 25 A Claim that to date Has gone unchallenged.

26 The Kidnapping case As Being A direct violation of sentencing As
 27 described in Cunningham As well As Romero. I HAVE sought out the
 28 Clerk of the court in San Diego, to provide me with AN Abstract

2.

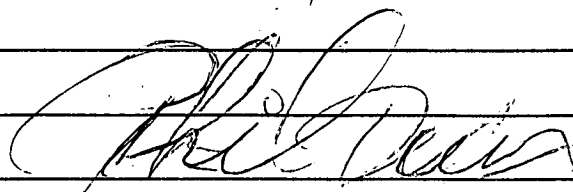
08-LV-0485

3.

08-LV-0485

1 The curmingham decision was made last year. I filed with
 2 what has to date gone unanswered by all but the lower court and
 3 its decision did not include an answer to the prima facie pleading
 4 of the writ. I would ask the court not to dismiss the pleading
 5 but to see it for what it is an illegal sentence stacked
 6 on top of an illegal sentence. It is for this reason I seek relief
 7 and none other. While California fears litigation from
 8 prisoners freed under these new cases. It should be no
 9 reason to deny me the ruling I seek. The AG has made no
 10 new statements. He has not proved that the recent curmingham
 11 case is not retro active and just because the kidnapping was
 12 in 1993 does not mean it is not currently affecting me on this
 13 commitment term. If looked at thru the glass I have been
 14 given eighteen (18) years for a charge I should have had the middle
 15 term for. The dual usage and the kidnapping are both
 16 unconstitutional sentencing practices!

20 Respectfully Submitted

21 

24 Phillip Donald

25 Litigant pro se


26 T-79921

27 ASU-1264

25 DATE: 8-7-08

ABSTRACT OF JUDGMENT - PRISON COMMITMENT - DETERMINATE
SINGLE, CONCURRENT, OR FULL-TERM CONSECUTIVE COUNT FORM
(Not to be used for multiple count convictions or for 1/3 consecutive sentences.)

CR-290.1

<input checked="" type="checkbox"/> SUPERIOR COURT OF CALIFORNIA, COUNTY OF <u>SAN DIEGO</u> <input type="checkbox"/> MUNICIPAL BRANCH OR JUDICIAL DISTRICT <u>EL CAJON</u>		
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: <u>PHILLIP WAYNE DUNN</u>		
DOB: <u>02-04-60</u> CASE NUMBER <u>SCE221319</u>		
AKA: CII#: <u>06262508</u> BOOKING #: <u>021173445</u> <input type="checkbox"/> NOT PRESENT		
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT <input type="checkbox"/> AMENDED ABSTRACT		
DATE OF HEARING <u>02-03-03</u> DEPT. NO. <u>11</u>		JUDGE <u>HERBERT J. EXARHOS</u>
CLERK <u>A. NARDUCCI</u> REPORTER <u>TAMMY NIELSEN, CSR #9143</u>		PROBATION NO. OR PROBATION OFFICER <u>IMMEDIATE SENTENCING</u>
COUNSEL FOR PEOPLE <u>MICHAEL PRZYTULSKI</u>		COUNSEL FOR DEFENDANT: <input checked="" type="checkbox"/> APPTD. <u>JACKIE CROWLE, ALTERNATE PUBLIC DEFENDER</u>

1. Defendant was convicted of the commission of the following felony:

CNT.	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY	TERM (YRS.)	TIME IMPOSED
1	PC	459*/460/667.5(c)(21)	Residential Burglary 1 st Degree	2002	02-03-03	JURY COURT PLEA	M.	8. 0.

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTION OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
PC 667(c)(21)	5							5 0

4. ☒ Defendant was sentenced pursuant to PC 667 (b)-(i) or PC 1170.12 (two-strikes).

5. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

a. RESTITUTION FINE of: \$500.00 per PC 1202.4(b) forthwith per PC 2085.5.

b. RESTITUTION FINE of: \$500.00 per PC 1202.45 suspended unless parole is revoked.

c. RESTITUTION of: \$TBD per PC 1202.4(f) to ☒ victim(s)* ☐ Restitution Fund

(*List victim name(s) if known and amount breakdown in item 7; below.)

(1) ☒ Amount to be determined. (2) ☐ Interest rate of: ___% (not to exceed 10% per PC 1202.4(f)(3)(F)).d. ☐ LAB FEE of: \$___ for counts: ___ per H&SC 11372.5(a).e. ☐ DRUG PROGRAM FEE of \$150 per H&SC 11372.7(a). f. ☐ FINE of \$___ per PC 1202.5.6. TESTING: ☐ AIDS ☐ DNA pursuant to ☐ PC 1202.1 ☐ PC 290.2 ☒ other (specify): PC 296

Other orders (specify): PROBATION TO SUBMIT POST-SENTENCE REPORT DIRECTLY TO THE D. O. C. PER PC 1203c RE: CREDITS AND RESTITUTION.

PC 667(a)(1) shall run consecutively to Count 1.

3. TOTAL TIME IMPOSED: 13 0

4. ☐ This sentence is to run concurrent with (specify):

0. Execution of sentence imposed

a. ☒ at initial sentencing hearing.b. ☐ at resentencing per decision on appeal.c. ☐ after revocation of probation.d. ☐ at resentencing per recall of commitment. (PC 1170(d).)e. ☐ other (specify):

1. DATE SENTENCE PRONOUNCED <u>02-03-04</u>	CREDIT FOR TIME SPENT IN CUSTODY TBD	TOTAL DAYS INCLUDING: TBD	ACTUAL LOCAL TIME 15.1	LOCAL CONDUCT CREDITS 0	<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1	SERVED TIME IN STATE INSTITUTION <input type="checkbox"/> DMH <input type="checkbox"/> CDC <input type="checkbox"/> CRC
------------------------------------------------	-----------------------------------------	------------------------------	---------------------------	----------------------------	------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------

2. The defendant is remanded to the custody of the sheriff ☐ forthwith ☒ after 48 hours excluding Saturdays, Sundays, and holidays.
 To be delivered to ☒ the reception center designated by the director of the California Department of Corrections.
☐ other (specify):

CLERK OF THE COURT: I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE <u>J. STURGEON</u>	DATE <u>02-04-03</u>
------------------------------------------	-------------------------

his form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

PROOF OF SERVICE BY MAIL

I declare that:

I am (resident of / employed in) the county of Kings California. I am over the age of eighteen years, my (~~business~~ / residence) address is:

Phillip W. Dunn, T-77951, ASU-126
CSATF + STATE PRISON, P.O. Box 5248, Corcoran, CA
93212

On Thursday, August 7th, 2008, I served the attached

Motion in Response to the Attorney General's motion to Dismiss
motion for Appointment of Counsel

on the 7th of August 2008 in said case, by placing a true copy there of enclosed in a sealed envelope with postage thereon fully paid, in the United States mail at CSATF + State Prison addressed as follows

- (1) Clerk of the Court in the United States District Court for the Southern District of California
880 Front Street SAN Diego, CA 92101 AND in another mailing MR. K. VICENIA, Deputy Attorney
General, Office of the Attorney General 110 West "A" Street, Suite 1100
- (2) SAN Diego, CA 92101

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on (date) August 7th, 2008, at CORCORAN California.

Type or print name Phillip W. Dunn, Petitioner pro se

Signature Phil Dunn